BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

AARON SHANE KING	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,014,825
AVERY DENNISON	)	
Respondent	)	
AND	)	
	)	
FIDELITY & GUARANTY INSURANCE	)	
Insurance Carrier	)	

AARON SHANE KING	)	
Claimant	)	
VS.	)	
	)	Docket No.1,020,000
SHARPLINE CONVERTING, INC.	)	
Respondent	)	
AND	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Sharpline Converting, Inc., and its insurance carrier, Liberty Mutual Insurance Company, appealed the January 26, 2005 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

In Docket No. 1,014,825, claimant alleges he injured his shoulders on December 18, 2003, while at work and tearing down shelving for Avery Dennison (Avery).

In the second claim, Docket No. 1,020,000, claimant alleges he began working for Sharpline Converting, Inc. (Sharpline), in March 2004 and sustained a series of mini-

traumas to his shoulders each and every workday. At the time of the January 6, 2005 preliminary hearing, claimant was continuing to work for Sharpline.

Judge Barnes consolidated these claims for preliminary hearing purposes.[1] In the January 26, 2005 Order, Judge Barnes ordered Avery and its insurance carrier to pay any medical expense claimant incurred from December 18, 2003, through March 15, 2004, when claimant began working for Sharpline. By implication, the Judge ordered Sharpline and its insurance carrier to pay the medical expense claimant incurred after March 15, 2004, and to provide claimant with medical benefits into the future.

Sharpline and its insurance carrier contend Judge Barnes erred by holding them responsible for claimant's bilateral shoulder injuries. They argue claimant's present symptoms and present need for medical treatment are the direct and natural consequence of his December 18, 2003 injury. Accordingly, Sharpline and its insurance carrier contend Avery and its insurance carrier, Fidelity & Guaranty Insurance, should be responsible for claimant's workers compensation benefits.

Conversely, Avery and its insurance carrier argue the Board lacks jurisdiction to hear the present appeal as the Judge merely determined which insurance carrier should be responsible for claimant's injuries. In the alternative, they argue claimant's employment at Sharpline aggravated his preexisting injury and, therefore, Avery is relieved of all responsibility for providing claimant with workers compensation benefits. Consequently, Avery and its insurance carrier request the Board to either dismiss this appeal or to affirm the January 26, 2005 Order.

Claimant did not file a brief with the Board and, therefore, claimant's position in this appeal is not known.

The issues in this appeal are:

1. Does the Board have jurisdiction to review a preliminary hearing finding regarding which of two employers is responsible for a worker's medical benefits?

2. If so, are claimant's symptoms and present need for medical treatment the natural consequence of his December 18, 2003 accident while working for Avery or are they the result of a new and separate accident that occurred from a series of mini-traumas while working for Sharpline?

[1] P.H. Trans. at 4.

FINDINGS OF FACT

After reviewing the record compiled to date and considering the parties' arguments, the Board finds:

1. On December 18, 2003, claimant injured his shoulders when he caught a 30- to 35-pound beam that fell from shelving he was helping to dismantle. The accident arose out of and in the course of claimant's employment with Avery Dennison. The day after the accident, claimant notified his supervisor.

2. The symptoms in claimant's right shoulder were far worse than the symptoms in his left shoulder. The week after the accident, Avery's plant was closed. By that time claimant was experiencing significant pain and, therefore, he sought medical treatment for his injuries with his personal physician, Dr. Willy Pereirra. Claimant saw his doctor on December 30, 2003, and on January 2, 2004, he underwent a right shoulder MRI. That MRI revealed a "bucket-handle tear of the superior labrum with extension into the biceps tendon consistent with a type IV SLAP [superior labrum anterior-posterior]; partial tear of the distal supraspinatus tendon without full thickness tear; [and a] subchondral bone cyst deep to the greater tuberosity."[2]

3. On December 30, 2003, Avery closed the Wichita, Kansas, plant where claimant worked. Consequently, claimant did not work for any employer until March 15, 2004, when he began working for Sharpline Converting, Inc., as a roll stripe operator, which was very similar to the job he performed for Avery.

4. Shortly before commencing employment with Sharpline, claimant began seeing Dr. J. Mark Melhorn for his shoulder injuries. The records introduced at the preliminary hearing indicate claimant first saw Dr. Melhorn on March 9, 2004, at the request of Avery or its insurance carrier. And those records also indicate Dr. Melhorn diagnosed pain in both shoulders with the right shoulder pain greater than the left, a right shoulder SLAP type IV, right shoulder impingement, and right shoulder partial rotator cuff tear. Claimant followed up with Dr. Melhorn on both March 16 and March 26, 2004, when the doctor began discussing possible surgery.

5. On April 5, 2004, claimant underwent a right shoulder MRI scan with contrast. That MRI, which was claimant's second, also showed a superior labral tear with extension into the biceps tendon and evidence of retracted biceps tendon, a type IV SLAP lesion, and a partial tear of the supraspinatus tendon. When claimant saw

[2] P.H. Trans., Cl. Ex. 1 at 2.

Dr. Melhorn on April 9, 2004, the doctor discussed surgery and also encouraged claimant to obtain a second opinion.

6. Dr. Melhorn wrote in his June 4, 2004 office notes that claimant indicated he was "doing pretty much a light type pattern with regard to work."[3] Nevertheless, as claimant continued working for Sharpline, the symptoms in both shoulders progressively increased. Claimant attempted to protect his right shoulder by using his left arm more.

7. Claimant eventually obtained a second opinion when, at his attorney's request, he saw Dr. George G. Fluter. Dr. Fluter diagnosed right shoulder and arm pain, right shoulder superior labral tear with extension into the biceps tendon, type IV SLAP lesion in the right shoulder, partial tear of the right supraspinatus tendon, and left shoulder pain due to overuse. Moreover, the doctor concluded claimant's condition was causally related to the December 18, 2003 accident at work.

8. Claimant last saw Dr. Melhorn on November 18, 2004. Dr. Melhorn's office notes that were introduced at the preliminary hearing do not reveal any comment from the doctor that claimant was sustaining additional injury while he continued to work for Sharpline. But on December 15, 2004, Dr. Melhorn wrote Avery's attorneys and stated claimant's right shoulder symptoms "have been progressive and increasing and therefore his current physical activities, both at work and at home, represent a contribution to his continued symptoms."[4]

9. When claimant testified at the January 6, 2005 preliminary hearing, he continued to experience symptoms in both shoulders and desired additional medical treatment.

CONCLUSIONS OF LAW

The Board has jurisdiction to review this appeal from the January 26, 2005 preliminary hearing Order. The issue in this appeal is whether claimant's present need for medical treatment is related to an accident that claimant sustained while working for Avery or whether that treatment is related to a subsequent accident that claimant sustained while working for Sharpline. And that is a compensability issue that the Board has the jurisdiction to review under K.S.A. 44-534a.

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[3] *Id.*, Resp. Ex. A.

[4] *Id.*, Resp. Ex. A.

The Board concludes the preliminary hearing Order should be modified. The Board finds claimant's present need for medical treatment is directly related to his December 18, 2003 accident that arose out of and in the course of his employment with Avery. Moreover, the greater weight of the evidence indicates claimant injured both shoulders on December 18, 2003, and that the symptoms claimant has experienced following that date are the natural consequence of that accident and resulting injury. Conversely, at this juncture of the claim, the evidence fails to establish claimant sustained a new and separate accidental injury working for Sharpline. Consequently, Avery and its insurance carrier should be responsible for claimant's workers compensation benefits.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but, instead, they are subject to modification upon a full presentation of the facts of the claim.[5]

WHEREFORE, the Board modifies the January 26, 2005 preliminary hearing Order and orders Avery and its insurance carrier to provide claimant with the medical benefits the Judge ordered in these claims.

IT IS SO ORDERED.

Dated this ____ day of March 2005.

BOARD MEMBER

c: Phillip B. Slape, Attorney for Claimant
Matthew J. Schaefer, Attorney for Avery and its Insurance Carrier
Janell Jenkins Foster, Attorney for Sharpline and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[5] K.S.A. 44-534a.